84-424

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No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1984

GEORGE L. KARAPINKA,

Petitioner

vs.

UNITED STATES GOVERNMENT,

Respondent

UNITED STATES DISTRICT
JUDGE ROBERT E. MAXWELL,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505
(304) 599-8686

46 pp

QUESTIONS PRESENTED

I. Whether the district court can deny the motion to resolve the question of venue when there is no basis in fact for such a denial and where such a denial is contrary to the controlling decisions and whether court of appeals can deny petition for writ of mandamus concerning district court's abuse of discretion in that ruling.

II. Whether the district court can deny contrary to Rule 56(c) and (e) a completely unopposed motion for summary judgment hearing supported by the affidavit, and whether the court of appeals can deny petition for writ of mandamus which is based on the abuse of district court's discretion in that ruling.

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Federal Rules of Civil Procedure

Rule 56	13,14

Petitioner pro se prays that a writ of certiorari issue to review the questions presented above.

CITATIONS TO OPINIONS BELOW

United States Court of Appeals for the Fourth Circuit denied petitioner's Petition for Writ of Mandamus with the Memorandum Order dated April 5, 1984, a copy of which is anexed hereto as a-2* Petition for Rehearing was denied by the U.S. Court of Appeals for the Fourth Circuit on June 20, 1984. See a-1 below. The Order of the United States District Judge Robert E. Maxwell is anexed hereto as a-5.

JURISDICTION

The Petition for Writ of Mandamus was denied April 5, 1984; Petition for Rehearing was denied June 20, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

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* Appendix below

STATEMENT OF THE CASE

Petitioner's pro se complaint charging the United States Government with violation of Chapter VII of Civil Rights Act of 1964, as amended in 1972, in dismissing him in August 1980 from his position of Research Chemist with the U.S. Department of Energy in Morgantown, West Virginia, was filed properly on June 8, 1981 in the U.S. District Court for the Western District of Pennsylvania. He is seeking reinstatement to his former position with backpay, backbenefits, and demages in excess of $10,000. Jurisdiction under 42 U.S.C. Sec. 2000e-16 is invoked.

July 17, 1981 U.S. Government filed the motion to dismiss for lack of venue in the Western District of Pennsylvania. In his response petitioner showed that the venue in the Western District of Pennsylvania was proper because due to his health problem justice can only be served in that District

Proper venue under 42 U.S.C. Sec. 2000e-5(f)(3) was confirmed by the District Court for the Western District of Pennsylvania by the Order dated October 30, 1981. In that Order U.S. Government's motion to dismiss was denied.

October 23, 1981 U.S. Government filed it's motion to transfer the case to the Northern District of West Virginia. November 2, 1981 petitioner filed his Motion to Resolve the Question of Venue (a-10). By the Order of the Magistrate the U.S. Government was ordered to file it's brief in support of it's Motion by December 11, 1981, the petitioner was ordered to file his answer by January 8, 1982. December 9, 1981 U.S. Government's brief was served upon the petitioner. This brief was never filed in the District Court, as the Clerk's docket entries show. Petitioner's answer was filed January 7, 1982. Petitioner showed there that Pittsburgh, Western District of Pennsylvania was unquestionably the most convenient forum for everybody. Ja-

nuary 14, 1982 the Magistrate issued her Report and Recommendation on this motion, recommending that the motion to transfer be denied, because the U.S. Government did not show any reasons for transfer; the parties were permitted ten days to file objections to Magistrate's Report and Recommendation. The U.S. Government did not file any objections.

January 13, 1982 the petitioner filed his Motion for Summary Judgment Hearing (a-13) supported by the Affidavit of George L. Karapinka (a-16) which showed that the petitioner was dismisses from his position with U.S. Department of Energy on the basis of the perjurious testimony of the U.S. Government's witness. January 19, 1982 the Magistrate issued her Report and Recommendation, recommending that the motion for summary judgment (?) be denied, althogh petitioner moved for the summary judgment hearing.

August 9, 1982 the District Court granted U.S. Government's motion to transfer case

to the Northern District of West Virginia.

By a copy of a letter dated August 17, 1982 from Gilbert W. Conley, Clerk District Court for the Western District of Pennsylvania to Thomas F. Stafford, Clerk District Court for the Northern District of West Virginia the petitioner was informed that the District Court for the Western District of Pennsylvania had filed an appeal in petitioner's case. (?) August 27, 1982 petitioner received notification from the Court of Appeals for the Third Circuit that an appeal No. 82-5504 was filed in petitioner's case. This appeal was filed by the District Court for the petitioner against petitioner's will.

August 17, 1982 petitioner mailed to the U.S. Court of Appeals for the Third Circuit his Petition for Writ of Mandamus asking that Court to direct Hon. Carol Los Mansmam to vacate and set aside his Order of August 9, 1982 because there had been no basis for the transfer of the case to Northern District of West Virginia.

By the Memorandum and Order dated December 6, 1982 the U.S. Court of Appeals for the Third Circuit denied Petition for Writ of Mandamus, and it suggested to the District Court a modification of the District Court's Order of August 9, 1982. By the Order of U.S. District Judge Carol Los Mansmann of December 13, 1982 petitioner's case was transferred to the Northern District of West Virginia, Clarksburg Division.

Because the District Court for the Western District of Pennsylvania did not rule on petitioner's Motion to Resolve the Question of Venue (a-10) which had been supported by the affidavit (a-11) (both filed November 2, 1981), petitioner filed his Motion to Rule on the Motion to Resolve the Question of Venue in the District Court for the Northern District of West Virginia on June 27, 1983 (a-21). In both of these motions, on the basis of the facts presented, petitioner was requesting the District Court

to schedule a hearing on venue. Since the District Court, appearently, had ignored these motions, on October 11, 1983 petitioner filed his Motion to Rule. All of these motions were unopposed.

On October 28, 1983 the District Court entered the Order (a-5) denying without any valid basis all the petitioner's pending motions. In this Order the District Court groundlessly contends that evidence of U.S. Government's witness Brahm Prasher's perjury was only in plaintiff's objections to Magistrate's report of January 19, 1982 (a-8). The fact is that this evidence of perjury has been in the Motion for Summary Judgment Hearing and the supporting affidavit. See a-13 to a-19.

On November 4, 1983 petitioner filed his Motion for Reargument of Plaintiff's Motion to Resolve the Question of Venue, showing there that the District Court did not have any basis for it's Order of October 28,1983.

The Motion for Reargument of Plaintiff's Motion for Summary Judgment Hearing was filed November 7, 1983. The facts given in this motion showed that there was no ground for the denial of petitioner's Motion for Summary Judgment Hearing. Both motions for rehearing were denied.

On January 18, 1984 petitioner filed in the U.S. Court of Appeals for the Fourth Circuit his Petition for Writ of Mandamus asking that Court to vacate and set aside the Order of the U.S. District Judge Robert E. Maxwell of October 28, 1983 (a-5) because the Judge abused his discretion by denying, contrary to all the facts, petitioner's Motion to Resolve the Question of Venue (a-10) and Motion for Summary Judgment Hearing (a-13). This Petition was denied April 5, 1984 (a-3). Petition for Rehearing was denied June 20, 1984 (a-1). In this Petition petitioner showed that Clarksburg, Northern District of West Virginia, as the site of the

trial is very inconvenient for everybody in comparison to Pittsburgh, Western District of Pennsylvania (a-21 to 24) including the District Court which has to travel there 60 miles from Elkins WV and U.S. Attorney who has to travel there 120 miles from Wheeling.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the resolution by this Court of the questions presented in this Petition will eliminate the conflicting rulings of the U.S. Court of Appeals for the Fourth Circuit, help strealine the judicial procedure, and eliminate needless appeals.

I. THE DISTRICT COURT CAN NOT DENY THE MOTION TO RESOLVE THE QUESTION OF VENUE WHEN THERE IS NO BASIS IN FACT FOR SUCH A DENIAL. THE COURT OF APPEALS CAN NOT DENY PETITION FOR WRIT OF MANDAMUS CONCERNING THE GROUNDLESS DENIAL OF THAT MOTION

Certiorari should be granted because the basis of this petition is the conflict between the ruling of the Court of Appeals for the Fourth Circuit and the rulings of other

circuits on transfer of venue, 28 U.S.C. Sec. 1404(a) ("such transfer is appropriate for the convenience of the parties and witnesses and in the interest of justice") and the conflict between the ruling of the Court of Appeals for the Fourth Circuit and the rulings of other circuits on petition of writ of mandamus based on the abuse by the district court of it's discretion. The supervision and intervention of this Court here are, therefore, essencial to the performance of justice.

November 2, 1981 petitioner filed his Motion to Resolve the Question of Venue (a-10) which had been supported by the affidavit (a-11), requesting the District Court to schedule the oral argument to resolve the question of venue in accordance with Shutte v. Armco Steel Corporation, 431 F.2d 22 at 25 (3rd Cir. 1970) and Plum Tree v. Stockment, 488 F.2d 754 at 756 (3rd Cir. 1973). This Motion which was unopposed was filed in the pendency of the U.S. Government's

BEST AVAILABLE COPY

Motion to Transfer Case to Northern District of West Virginia which was filed October 23 1981. The District Court ignored petitioner's Motion to Resolve the Question of Venue and transferred the case to Northern District of West Virginia.

After petitioner's two motions urging the District Court for the Northern District of West Virginia to rule on petitioner's Motion to Resolve the Question of Venue (a-10, 11) the District Court denied that Motion (a-5) contrary to all the facts which were before the District Court at that time:

1. Clarksburg, Northern District of West Virginia - inconvenient for everybody. Pittsburgh, PA is convenient for all the witnesses. If any of them would have to travel from Morgantown, WV the distance to Pittsburgh (70 miles) would only be 20 miles longer then to Clarksburg, WV (50 miles). The District Court would have to travel to Clarksburg from Elkins, WV (60 miles) and U.S.

Attorney from Wheeling, WV (120 miles); in Pittsburgh they are located in the same building.

2. Due to petitioner's medical problem the only site for the trial where justice will be served is Pitsburgh, PA. See a-11 and a-23, 24.

It is obvious from the record of this case in the District Court, which the petitioner has requested the Clerk of the District Court to forward in support of this Petition to the Clerk of this Court, the District Court has abused it's discretion in denying petitioner's Motion to Resolve the Question of Venue and to schedule an oral argument for that Motion (a-10). Additioanally the denial of that Motion was contrary to Shutte v. Armco Steel Corporation, supra and Plum Tree v. Stockment, supra.

This abuse of discretion was sufficient basis for the Court of Appeals for the Fourth Circuit to grant petitioner's Petition for Writ of Mandamus which that Court

had not done (a-3) contrary to the ruling of the Court of Appeals for the Third Circuit in Shutte v. Armco Steel Corporation, supra and Plum Tree v. Stockment, supra.* This fact constitutes a conflict between the ruling in this case of the Fourth Circuit and other Circuits which conflict warrants granting of this petition for writ of certiorari by this Court.

II. DISTRICT COURT CAN NOT DENY CONTRARY TO RULE 56(c) AND (e) A COMPLETELY UNOPPOSED MOTION FOR SUMMARY JUDGMENT HEARING SUPPORTED BY THE AFFIDAVIT. COURT OF APPEALS CAN NOT DENY PETITION FOR WRIT OF MANDAMUS WHICH IS BASED ON THE DENIAL OF THAT MOTION BY THE DISTRICT COURT

Certiorari should be granted because the basis of this petition is the conflict bet-

* The Court of Appeals statement (a-3):"In addition where, as here, a case is transferred from a district court in one circuit to one in another, mandamus is not available in the new circuit to review a decision of the district court which transferred the case" is totally inapplicable. The decision on petitioner's Motion to Resolve the Question of Venue was rendered by the District Court of the Fourth Circuit. See a-5.

ween the ruling of the Court of Appeals for the Fourth Circuit (a-3) and the rulings of Courts of Appeals on a completely unopposed motion for summary judgment hearing (a-13 to 19) under Rule 56(c) and (e) which was supported by the affidavit (a-16), and the conflict between the ruling of the Court of Appeals for the Fourth Circuit and the rulings of other Courts of Appeals on the petition for writ of mandamus based on the abuse by the District Court of it's discretion. The supervision and intervention of this Court are, therefore, essencial here for the performance of justice.

Petitioner's Motion for Summary Judgment Hearing (a-13) and the supporting affidavit (a-16) were filed on January 15, 1982. In that Motion the petitioner requested an oral argument on his summary judgment motion. This fact is undiputedly shown by the third sentence of the first paragraph of that Motion:"The plaintiff respectfully requests the Honorable Court to schedule a hearing

on this summary judgment ..." and by petitioner's proposed Order on that Motion (a-20). The reason for that Motion for Summary Judgment Hearing was the fact that petitioner pro se, almost ignorant of law, did not feel able to argue the summary judgment motion on papers. Such a hearing, or oral argument, is in accordance with Dredge Corp. v. Penny, 338 F.2d 456 (9th Cir. 1965) where the Court of Appeals ruled that the party requesting summary judgment hearing should do so in writting.

The District Court denied the completely unopposed Motion for Summary Judgment Hearing (a-13) contrary to all the facts which were before the District Court (a-13 to a-19). The denial of that Motion, the ruling which is totally contrary to Rule 56 (c) and (e), constitutes abuse of Disrtict Court's discretion. Additionally the denial of this Motion was contrary to the controlling decision by the Court of Appeals for

the 9th Circuit in Dredge Corp. v. Penny, supra. This abuse of discretion was a sufficient basis for the Court of Appeals for the Fourth Circuit to grant petitionr's Petition for Writ of Mandamus which was not done (a-3). The Court of Appeals for the Fourth Circuit statement (a-3):

"In addition where, as here, a case is transferred from a district court in one circuit to one in another, mandamus is not available in the new circuit to review decision of the district court which transferred the case"

is totally inapplicable. The decision on petitioner's Motion for Summary Judgment Hearing was rendered by the District Court of the Fourth Circuit. See a-5. Therefore certiorari should be granted by this Court.

CONCLUSION

For the above stated reasons the petitioner prays that this Court will grant the writ of certiorari to review the questions presented in this Petition.

Dated: September 12, 1984

Respectfully submitted,

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road
Apt. B-14
Morgantown, West Virginia
26505

(304) 599-8686

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

F I L E D
JUN 20 1984
U.S. Court of Appeals
Fouth Circuit

No. 84-1070

IN Re: George L. Karapinka,
Petitioner

O R D E R

Upon consideration of the petitioner's petition for rehearing,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Murnaham for a panel consisting of Judge Russell, Judge Phillips, and Judge Murnaghan.

For the Court,

William K. Slate, II

Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1070

UNPUBLISHED

In Re:
George L. Karapinka,
Petitioner

On Application for a Writ of Mandamus. Robert E. Maxwell, District Judge.(C/A No. 83- 0017)

Submitted: February 9, 1984

Decided: April 5, 1984

Before RUSSEL, PHILLIPS, and MURNAGHAN,
Circuit Judges.

(George L. Karapinka, Petitioner Pro Se.)

PER CURIAM:

George Karapinka, plaintiff in a discrimination suit against a former employer, petitions this Court for a writ of mandamus. He asks for relief from a decision of the district court which denied his Motion for a Summary Judgment Hearing and his Motion to Resolve the Question of Venue.

Whether the trial court's decision in these matters are correct can be determined when an appeal from a final order is taken. Mandamus may not be used to circumvent the appellate process. In re United Steelworkers of America, 595 F.2d 958, 960 (4th Cir. 1979). In addition where, as here, a case is transferred from a district court in one circuit to one in another, mandamus is not available in the new circuit to review a decision of the district court which transferred the case. See Ellicott Machine Corporation v. Modern Welding Co., Inc., 502 F.2d 178, 180-81 note 4 (4th Cir. 1974).

Accordingly, the petition for writ of mandamus is denied.

DENIED.

COPY

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S. District Court
Filed at Clarksburg, W.VA.

OCT 28 1983

Thomas F. Stafford
Clerk

GEORGE L. KARAPINKA,
Plaintiff,

v.

CIVIL ACTION
NO. 83-0017-C

UNITED STATES GOVERNMENT,
Defendant.

O R D E R

This civil action has been transferred from the United States District Court for the Western District of Pennsylvania. Since the transfer, Plaintiff has twice urged the Court to rule on his "Motion to Resolve the Question of Venue" which was filed with the Western District of Pennsylvania on November 2, 1981. (Motion to Rule on the Motion to Resolve the Question of Venue, filed June 27, 1983; Motion to Rule, filed October

11, 1983.)

A review of the record reveals that Plaintiff actually urges the Court to rule on Defendant's Motion to Dismiss for Lack of Venue filed July 17, 1981. The latter motion was initially heard by United States Magistrate Ila Jeanne Sensenich. Her report and recommendation, filed on October 21, 1981, was adopted as the opinion of the Western District of Pennsylvania Court by Order entered October 30, 1981. Since that time, the Western District of Pennsylvania granted Defendant's Motion to Transfer this civil action to the Northern District of West Virginia. It is the opinion of the Court that the question of venue has now been fully resolved. Therefore, it is

ORDERED that Plaintiff's Motion to Resolve the Question of Venue and Motion to Rule are DENIED.

In memorandum submitted in support of his Motion to rule, Plaintiff contends that a

Motion for Summary Judgment Hearing, filed November 6, 1981, is still pending. Plaintiff filed two motions for summary judgment before the Western District of Pennsylvania Court. United States Magistrate Sensenich recommended that the first Motion for Summary Judgment be denied in a report dated November 19, 1981, which was adopted by the District Court by Order dated December 14, 1981. Subsequently, Plaintiff filed a second Motion for Summary Judgment. Magistrate Sensenich filed a report recommending that the second motion be denied on January 19, 1982. The Plaintiff filed objections to this report on January 29, 1982. The Western District of Pennsylvania ruled on Defendant's Motion to Transfer before it considered the Magistrate's recommendation on the second Motion for Summary Judgment, and specifically deferred consideration to this Court. (Memorandum Opinion and Order of August 9, 1982.)

Plaintiff's objections to the Magistrate's report of January 19, 1982, claim that certain "evidence" tending to show that Department of Energy Witness Braham Prasher perjured himself in testimony before the Merits Systems Protection Board was ignored by the Magistrate. Even if these allegations were proven true, however, that would not establish Plaintiff's entitlement to judgment as a matter of law.

After consideration of all matters now before the Court, including the objections of Plaintiff, the Court is of the opinion that the Report and Recommendation of Magistrate Sensenich accurately reflects the law applicable to the facts and circumstances before the Court. Quite simply, Plaintiff has failed to show that no genuine issues of material fact exist and failed to establish a right to judgment at this time. Therefore, it is

ORDERED that the Report and Recommendati-

tion of United States Magistrate Sensenich dated January 19, 1982, is accepted, approved and adopted as the opinion of this Court. Accordingly, it is

ORDERED that Plaintiff's Motion for Summary Judgment filed January 15, 1982, be, and the same is hereby, DENIED.

ENTER: October 28th, 1983.

x Robert E. Maxwell
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA, Plaintiff vs UNITED STATES GOVERNMENT, Defendant	Civil Action No. 81-915

MOTION TO RESOLVE THE QUESTION OF VENUE

I, George L. Karapinka the plaintiff respectfully request the Honorable Court to schedule the argument to resolve the question of venue on the above named action, which was raised by the defendant.

The complaint was filed on June 8, 1981. The summons was served upon the defendant on June 29, 1981. On July 17, 1981 the defendant filed motion to dismiss for lack of venue. This motion for some unknown reason was never scheduled for argument.

The plaintiff respectfully requests the Honorable Court to schedule plaintiff's motion to resolve the question of venue as soon as possible.

Respectfully submitted,

x George L. Karapinka
Plaintiff, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA, Plaintiff vs. UNITED STATES GOVERNMENT, Defendant	Civil Action No. 81-915

AFFIDAVIT OF GEORGE L. KARAPINKA

State of Pennsylvania)
County of Allegheny)

George L. Karapinka, of full age, being duly sworn upon his oath, deposes and says:

1. I make this affidavit to support my right of venue in the Western District of Pennsylvania.

2. I undervent the open heart surgery to replace my aortic valve in Pittsburgh, Pennsylvania in August of 1979.

3. I resided at my sister's Orysia Karapinka appartment, 5830 Elwood, Pittsburgh, Pennsylvania, 15232.

4. Prolonged drives impare my performance for at least one day.

5. Unlawfull employment practices were

committed by the United States Merit Systems Protection Board in Philadelphia, Pennsylvania.

x George L. Karapinka
George L. Karapinka

Sworn and subscribed
before me this 2nd day
of November, 1981.

x Mildred Eckert

Notary Public
4600 Fifth Ave.
Pgh; Pa. 15213

MILDRED ECKERT, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES AUG. 31, 1982
Member, Pennsylvania Association of Notaries

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA, Plaintiff vs. UNITED STATES GOVERNMENT, Defendant	Civil Action No. 81-915

MOTION FOR SUMMARY JUDGMENT HEARING

Plaintiff's summary judgment motion was filed November 6, 1981 and supplimented with the affidavit dated November 18, 1981. This motion was dismissed January 14, 1981. The plaintiff respectfully requests the Honnorable Court to schedule a hearing on this summary judgment for the following reasons:

1. Not all of plaintiff's avered testimony was considered by the Court in the oppinion and in the judgment on the motion. Plaintiff's affidavit dated November 18,1981 mailed to the clerk's office November 18, 1981 (filed probably November 19, 1981) was not considered by the Court. Plaintiff's affidavit filed December 2, 1981 was also not considered by the Court.

2. There was no avered testimony of any kind submitted by the defendant in opposition to plaintiff's motion for summary judgment.

3. Additional testimony is submitted by the plaintiff here in this motion. The plaintiff believes that this action could, very conveniently for everybody, be decided in a summary judgment hearing. He, therefore, submits the following testimony:

In plaintiff's appeal hearing before the U.S. Merit Systems Protection Board November 4-7, 1980, the U.S. Department of Energy witness Brahm Prasher perjuried himself in his testimony against the plaintiff. This fact is shown by Exhibits A and B of the affidavit of George L. Karapinka, attached herein. To the plaintiff's question, the answer under oath of the witness Brahm Prasher (Exhibit A, circled) was:"No, it was a note from Dr. Karr, who was acting for me as a section chief at that time." the

handwritten note by Brahm Prasher and signed by Brahm Prasher (Exhibit B) contradicts this statement.

As the result of this testimony by Brahm Prasher at plaintiff's appeal hearing, plaintiff's appeal was denied. Plaintiff was removed from his position of Research Chemist with the U.S. Department of Energy.

Respectfully submitted,

x George L. Karapinka

Plaintiff, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

vs.

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia
County of Monongalia

George L. Karapinka, of full age, being duly sworn upon his oath, deposes and says:

1. I make this affidavit in support of my motion for summary judgment against the defendant, United States Government.

2. Exhibit A is the page from the transcript of the proceedings of my appeal hearing (November 4-7, 1980) containing testimony under oath of Brahm Prasher.

3. Exhibit B is the note from Brahm Prasher found by me November 16, 1979 in my mail box.

x George L. Karapinka

George L. Karapinka

Sworn and subscribed
before me this 13th day
of January, 1982

x Judy Leydig

Notary Public
State of West Virginia
County of Monongalia
My Comm. Expires 2/18/84

Exhibit A

Q Now, was there a personal note requesting me to conduct the review from you to me?

A No, it was a note from Dr. Karr, who was acting for me as a section chief at that time.

Stenomask Reporting Service

159 Maplewodd Estates, Scott Depot, W.V. 25560 755-8191

x George L. Karapinka

x Judy Leydig

Notary Public
State of West Virginia
County of Monongalia
My Comm. Expires 2/18/84

Exhibit B

(Hand written)

November 19, 1979

George Karapinka

Please provide me with a review of "The Simplex Coal and Biomass Gasification Process-Phase III-A Pilot Plant Support." Please return the manuscript when you are thru with it. This is the only unmarked copy I have.

x Brahm Prasher

x George L. Karapinka

x Judy Leydig

Notary Public
State of West Virginia
County of Monongalia
My Comm. Expires 2/18/84

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA, Plaintiff vs. UNITED STATES GOVERNMENT, Defendant	Civil Action No. 81-915

ORDER OF COURT

It is hereby ORDERED on this day of January 1982, that the hearing on plaintiff's motion for summary judgment be held on

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

GEORGE L. KARAPINKA, :
Plaintiff

vs. : Civil Action
No. 83-0017-C

UNITED STATES GOVERNMENT, :
Defendant

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO RULE ON THE MOTION TO RESOLVE THE QUESTION OF VENUE

The venue for this Action was and is proper under 42 U.S.C. 2000e-5(f)(3) in the Western District of Pennsylvania.

Considering all the facts, Pittsburgh, PA as the site of the trial for this Action, is considerably more favorable for everybody involved in the trial than Clarksburg, W-V. Therefore the plaintiff is respectfully requesting this Court to schedule a hearing or a conference to resolve the question of venue, on the pending Motion, in accordance with Shutte v. Armco Steel Corporation, 431 F.2d 22 at 25 (3rd Cir. 1970) and with Plum Tree v. Stockment, 488 F.2d 754 at 756 (3rd

Cir. 1973).

The plaintiff in his Answer in Opposition to the Motion to Transfer the Case to the Northern District of West Virginia (filed January 7, 1983) named his six witnesses and the locations from which they will have to travel to the site of the trial. The travel for these witnesses to Pittsburgh, Western District of Pennsylvania is unquestionably more convenient than to Clarksburg, W. V. On the other hand, according to District Court's records, the U.S. Government did not name the witnesses it will be using at the trial nor did it name the locations from which they will have to travel to the site of the trial. Considering the distances from Morgantown, W.V. to Pittsburgh, PA. (70 miles) and from Morgantown to Clarksburg, W.V (50 miles), therefore if the trial were to be held in Clarksburg, W.V. and any of the witnesses were to travel there from Morgantown, W.V., it would be only some 20 miles shorter on I-79 than to Pittsburgh, PA. For

the six plaintiff's witnesses: Wm. J. Bayley resident of Washington, PA; D.A. Fontinella, B.D. Prasher, S.J. Sugiama all residents of Washington, D.C. area; F.L. Fishman resident of Philadelphia, PA area; E.L. Larcher resident of Oak Ridge, Tenn. area, Clarksburg, W.V. will be very inconvenient. For example his three witnesses reside in Washington, D.C. and the regular roundtrip air fare on USAir from there to Pittsburgh, PA. is only $190; but from Washington, D.C. to Clarksburgh, W.V. it is $276 (Dec. 14, 1982 quote). All of these witnesses will be subpenoed.

However, the main factor in favor of Pittsburgh location is plaintiff's pro se health problem, see Affidavit of George L. Karapinka (filed November 2, 1981). For the plaintiff pro se to drive every day fro Morgantown to Clarksburg during a possibly long trial, would be very prejudicious since he is his own attorney and driving will impare his courtroom performance. On the other

hand if the trial were to be held in Pittsburgh, PA. then the plaintiff pro se will stay at his partial residence in his sister's home (5830 Elwood, Pittsburgh, PA. 15232), avoiding any driving for the duration of the trial and thus he will be able to prosecute his case much better.

In ruling on this pending Motion to Resolve the Question of Venue the plaintiff is repectfully requesting this Court to take into the consideration all the facts enumerated above.

Respectfully submitted,

x George L. Karapinka
Plaintiff pro se

Dated: June 23, 1983